



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

the remainders and reversions practically indestructible. But the land need not remain inalienable; for apparently the tenant in tail might be authorized by statute to convey an interest like a base fee.²¹

THE EFFECT OF LEGITIMATION OF A CHILD ON THE FATHER'S RIGHT TO CURTESY. — By the civil law children born in concubinage were rendered legitimate by the subsequent marriage of their parents.¹ A similar rule exists in the canon law.² But from earliest times the common law has been that no act of the parents can render a bastard capable of inheriting.³ So to-day a child born before its parents marry, though legitimated by the law of its domicile, cannot inherit English land.⁴ In most of the United States the more humane doctrine of the civil and canon laws has been, to a greater or less extent, adopted by legislation.⁵ The statutes commonly establish legitimacy if there is a marriage between the child's parents and a recognition of the child as his own by the father. Where the acts provide that such children shall be legitimate, without qualification, it has been uniformly held that they are made heritable issue of the same status as children born in wedlock.⁶ A recent case arising under a statute of this class⁷ raises the question whether the legitimation of a bastard by the marriage of its parents gives the father a right to curtesy in the mother's estate of inheritance. *Bond v. Bond*, 16 Va. L. Reg. 411 (Va., Circ. Ct., Pulaski Co.).

The classic statement of the requisites for tenancy by the curtesy is that of Littleton:⁸ "In every case where a man taketh a wife seised of such an estate of tenements, etc., as the issue, which he hath by his wife, may by possibility inherit the same tenements of such an estate as the wife hath, as heir to the wife; in this case, after the decease of the wife, he shall have the same tenements by the curtesy of England." This right of the husband has always been a favorite of the common law.⁹ It was allowed to defeat the lord's wardship when the feudal law was at its height.¹⁰ It is destroyed neither by the husband's abuse of his wife,¹¹

²¹ Cf. 4 CONSOL. LAWS OF N. Y. 4932. See GRAY, PERPETUITIES, §§ 35 n., 312.

¹ Inst. I, 10, 13; 3, 1, 2; Cod. 5, 27, 10; Nov. 12, 4; 78, 3; 89, 8. As to the requirement of the child's consent, see Dig. 1, 6, 11; 1, 7, 5.

² It is confined to children born as a result of fornication. Decretal. Gregor. IX, iv, 17, 6, *Tanta est vis matrimonii*; iv, 17, 1, *Conquestus est nobis H.* See MAITLAND, CANON LAW IN ENGLAND, 52-56; 16 HARV. L. REV. 22, 39-42.

³ See GLANVILL, vii, 13, 15; Stat. Merton, 20 Hen. III, c. 9.

⁴ *Birtwhistle v. Vardill*, 7 Cl. & F. 805. See *In re Goodman's Trusts*, 17 Ch. D. 266; *In re Grey's Trusts*, [1892] 3 Ch. 88.

⁵ See STIMSON, AM. STAT. LAW, §§ 3151-3155, 6631-6634.

⁶ *Blythe v. Ayres*, 96 Cal. 532; *Jackson's Adm'r's v. Moore*, 8 Dana (Ky.) 170; *Williams v. Williams*, 11 Lea (Tenn.) 652; *Rice v. Efford*, 3 Hen. & M. (Va.) 225; *Ash v. Way's Adm'r's*, 2 Grat. (Va.) 203. *M'Cormick v. Cantrell*, 7 Yerg. (Tenn.) 615, is not *contra*, the capacity of the child in that case being determined by a special act of the legislature, which did not expressly "legitimate" him, and which, the court held, had to be construed strictly.

⁷ VA. CODE, 1904, § 2553.

⁸ LIT. § 52.

⁹ See BRITTON, ii, c. 2, § 10; 2 POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW, 2 ed., 414-417.

¹⁰ See 2 POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW, 417-420.

¹¹ *In re Coyle's Estate*, 1 Lanc. L. Rev. (Pa.) 234.

nor by his deserting her and living in adultery,¹² nor even by a decree of divorce *a mensa et thoro* pronounced against him.¹³ In accordance with the policy indicated by these decisions, and inasmuch as the effect of the legitimation statute is to render the once illegitimate issue capable of inheriting from the mother,¹⁴ thus satisfying the requirements of Littleton's definition, one would expect the question proposed to be answered in the affirmative. It was so answered the only time it has been presented to a court of last resort.¹⁵

The principal case reaches an opposite conclusion, setting up as a requisite for curtesy the birth of issue during coverture. No decision of the highest court of Virginia requires this position.¹⁶ Coke, it is true, says that the husband must plead that he had issue born during the marriage,¹⁷ but this is only because no other fact at common law made the issue heritable. The rule should cease when the reason for it ends. The case on which the court chiefly relies holds merely that the *adoption* of a child gives no right to curtesy.¹⁸ But in that case the difficulty was that the child was not the *issue* of the adopting parent. Even were the matter *res nova*, the policy of the decision should be criticized, in that it removes a potent inducement to legitimate the child.¹⁹

RIGHT TO RESCIND STOCK SUBSCRIPTIONS OBTAINED BY FRAUD. — Early English cases denied the right of rescission to one who had been induced by the fraud of an agent of a corporation to subscribe for its stock, on the ground that its agents have no authority to make fraudulent representations.¹ Rescission is now, however, universally allowed, generally on the theory that an agent empowered to obtain subscriptions has authority to make such representations,² and sometimes on the additional ground that the corporation cannot claim the benefits of the subscription without assuming the representations that procured them.³ But when the subscription contract was obtained by a promoter before the organization of the corporation, rescission is not allowed; since, first, the relation of agency did not exist because of the non-existence of any principal, and, secondly, ratification of the fraud cannot be presumed in absence of knowledge of it.⁴

¹² Wells v. Thompson, 13 Ala. 793. See Sidney v. Sidney, 3 P. Wms. 269, 276.

¹³ Smoot v. Lecatt, 1 Stew. (Ala.) 590.

¹⁴ See cases cited, note 6.

¹⁵ Hunter v. Whitworth, 9 Ala. 965.

¹⁶ See Carpenter v. Garrett, 75 Va. 129; Breeding v. Davis, 77 Va. 639.

¹⁷ See Co. Lit. 29 b.

¹⁸ Murdock v. Murdock, 74 N. H. 77.

¹⁹ A contrary decision in the principal case would not give curtesy to the father of a bastard, by statute made its mother's heir, without the marriage of the parents, for a man can have curtesy only in the lands of his wife.

¹ Royal British Bank, *ex parte* Nicol, 5 Jur. N. S. 205. It was necessary that the fraud of the agent be acquiesced in at a general meeting. Ayre's Case, 25 Beav. 513.

² Waterhouse v. Jamieson, L. R. 2 H. L. Sc. 29; Waldo v. R. R. Co., 14 Wis. 575.

³ Henderson v. R. R. Co., 17 Tex. 560. See COOK, CORPORATIONS, § 140.

⁴ Oldham v. Mt. Sterling, etc. Co., 103 Ky. 529. *Contra*, McDermott v. Harrison, 9 N. Y. Supp. 184. See 16 HARV. L. REV. 380.